

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PENTAIR WATER TREATMENT (OH)
COMPANY (formerly known as
ESSEF CORPORATION) and
PENTAIR WATER POOL & SPA, INC.
(formerly known as PAC-FAB,
INC.) and PENTAIR WATER BELGIUM
BVBA (formerly known as STRUCTURAL
EUROPE N.V. formerly known as SFC),

Plaintiffs,

08 Civ. 3604 (BSJ)

-against-

THE CONTINENTAL INSURANCE
COMPANY (as successor by merger to
FIDELITY & CASUALTY INSURANCE
COMPANY OF NEW YORK) and
CNA INSURANCE COMPANIES,

Defendants.

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**DECLARATION OF DAVID LEHMAN IN SUPPORT OF MOTION
TO DISMISS THE FIRST AMENDED COMPLAINT**

DAVID LEHMAN, under penalty of perjury, declares as follows:

1. I am an Assistant Secretary of Continental Casualty Company (“CCC”).

CCC is an Illinois insurance company with its principal place of business in Chicago, Illinois. I have personal knowledge of the facts set forth below, except as otherwise noted.

2. I understand that the plaintiffs identified in the caption above have named, as defendants, The Continental Insurance Company (as successor by merger to Fidelity &

Casualty Insurance Co. of New York) (“CIC”) and “CNA Insurance Companies.” “CNA Insurance Companies” is not a legal entity related to CIC or CCC, but is rather an apparent reference to the CNA service mark previously registered by CCC. This declaration describes some of the history of the “CNA” service mark and describes why there is no legal entity named “CNA Insurance Companies” which is related to CIC or CCC.

3. “CNA” is a registered service mark. On January 11, 1966, CCC registered the service mark, “CNA,” with the United States Patent and Trademark Office (Reg. No. 802,010). The mark was listed on the Principal Register under Class 102 and registered for use in underwriting accident, health, liability, property, marine, and multiple peril insurance and providing reinsurance and bonds. This “CNA” service mark appears as three capital letters with no periods or spaces between them. Attached as Exhibit A is a true and correct copy of the registration certificate for this service mark.

4. On March 23, 1973, CCC sold its “CNA” service mark to CNA Financial Corp. (“CNAF”) as a result of CNAF becoming CCC’s parent. CNAF is a holding company whose subsidiaries include insurance companies, but CNAF does not itself engage in the business of insurance. Subsequently, CCC continued to perform the same insurance services and continued to use the “CNA” service mark.

5. On July 13, 1976, CNAF registered a different service mark, “CNA,” with the United States Patent and Trademark Office (Reg. No. 1,043,744). The mark was listed on the Principal Register under Class 36 and registered for use in insurance underwriting services. This “CNA” service mark appears as three bold-faced, block-

italicized, capital letters with no periods between them. Attached as Exhibit B is a true and correct copy of the registration certificate for this service mark.

6. On October 26, 1976, CNAF registered the service mark “Insurance from CNA” with the United States Patent and Trademark Office (Reg. No. 1,051,458). The mark was listed on the Principal Register under Class 36 and registered for use in insurance underwriting services. The “Insurance from CNA” service mark appears as two lines of text: “INSURANCE FROM” (in bold-faced, block-italicized letters) over “CNA” (in three bold-faced, block-italicized, capital letters with no periods between them). Attached as Exhibit C is a true and correct copy of the registration certificate for this service mark.

7. The service marks “CNA” and “Insurance from CNA” are used by CCC and certain affiliated companies, such as CIC.

8. No entity related to CCC or CIC is incorporated in any state with the legal name of “CNA Insurance Companies.”

9. I understand that a person who is not affiliated with CIC or CCC, Mr. Larry Brown, incorporated an entity entitled “CNA Insurance Companies, Inc.,” as reported in *CNA Financial Corp. v. Brown*, 922 F. Supp. 567, 570-72 (M.D. Fla. 1996), *aff’d*, 162 F.3d 1334 (11th Cir. 1998).

10. The only legal entity entitled “CNA Insurance Companies” I am aware of is the company founded by Mr. Brown. There is no legal entity named “CNA Insurance Companies” which is related to CCC, CIC or the CNA service mark.

Dated: Chicago, Illinois
July 7, 2008

/s/David Lehman
DAVID LEHMAN

LEHMAN DEC

EX. A

United States Patent Office

802,010
Registered Jan. 11, 1966

PRINCIPAL REGISTER Service Mark

Ser. No. 209,238, filed Jan. 4, 1965

CNA

Continental Casualty Company (Illinois corporation)
310 S. Michigan Ave.
Chicago, Ill.

For: UNDERWRITING ACCIDENT, HEALTH,
LIABILITY, PROPERTY, MARINE, AND MULTIPLE
PERIL INSURANCE AND PROVIDING REINSUR-
ANCE AND BONDS, in CLASS 102.

First use Dec. 21, 1964; in commerce Dec. 21, 1964.

F. GILMORE, *Examiner.*

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EX. B

Int. Cl.: 36

Prior U.S. Cl.: 102



United States Patent Office

Reg. No. 1,043,744
Registered July 13, 1976

SERVICE MARK
Principal Register



CNA Financial Corporation (Delaware corporation)
333 S. Wabash
Chicago, Ill. 60685

For: INSURANCE UNDERWRITING SERVICES, in
CLASS 36 (U.S. CL. 102).
First use Dec. 21, 1964; in commerce Dec. 21, 1964.
Owner of Reg. Nos. 802,010, 957,480, and 986,191.

Ser. No. 63,594, filed Sept. 19, 1975.

G. E. PENCE, Examiner

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EX. C

Int. Cl.: 36

Prior U.S. Cl.: 102

United States Patent Office

Reg. No. 1,051,458

Registered Oct. 26, 1976

SERVICE MARK

Principal Register

INSURANCE FROM
CNA

CNA Financial Corporation (Delaware corporation)
333 S. Wabash
Chicago, Ill. 60685

For: INSURANCE UNDERWRITING SERVICES,
in CLASS 36 (U.S. CL. 102).

First use July 21, 1975; in commerce July 21, 1975; in
a different form Dec. 21, 1964.

Applicant disclaims the exclusive use of the words
"Insurance From" apart from the mark as shown.

Ser. No. 63,650, filed Sept. 19, 1975.